Vic
A few changes
Marc

March 15, 1996

[Name]
[Address]
[State]

Dear _____:

Now that the Liggett "settlement" agreement in Castano has been made public, I wanted to follow up on the conversation we had yesterday concerning the extent to which Liggett has, and has not, agreed to the restrictions in the FDA proposed rule. Some of the plaintiffs' attorneys have tried to suggest that Liggett has in fact "accepted" those restrictions and that they therefore are "reasonable."

In fact, however, as you can see from the enclosed chart which compares the specific requirements of the FDA rule to the limited terms of the Liggett "settlement," Liggett has refused to accept about two-thirds of the FDA's restrictions, and has significantly limited its agreement with respect to all but two of the others.

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Source: https://www.industrydocuments.ucsf.edu/docs/kpbk0000

Specifically, Liggett has refused to accept 14 of the 22 restrictions in the proposed rule, including any restrictions on sales through vending machines, self-service devices, or the mail (Rule 897.16(c)); the FDA demand that each cigarette company help fund a $150 million anti-smoking program (Rule 897.29); FDA's insistence that cigarettes bear the label "Nicotine Delivery Device" (Rule 897.32(b)); FDA's demand for an additional warning addressed to youth (Rule 897.32(c)); and the FDA regulation that would trigger even more stringent restrictions in the future if certain reductions in underaged smoking are not achieved within seven years (Rule 897.44). Liggett has refused to accept all of these FDA provisions.

Liggett likewise has refused to accept the FDA rules that would make cigarette manufacturers responsible for removing existing advertising in stores around the country (Rule 897.12) and would hold the manufacturer responsible if a retailer sold cigarettes to minors (Rules 897.10 and 897.14). Liggett thus appears to continue to agree with others in the industry that all of these 14 restrictions demanded by FDA are not unreasonable.

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Source: https://www.industrydocuments.ucsf.edu/docs/kpbk0000

Similarly, even in the 6 instances where Liggett has partially accepted an FDA proposal, the "settlement" significantly limits that acceptance to activities or promotions that "appeal to minors." For example, Liggett does not accept FDA's total prohibition on sampling (Rule 897.16(d)), but instead reserves the right to do so in locations where "no minors are present or likely to be present." (By contrast, last July, before FDA announced its rules, Philip Morris USA decided to stop all sampling entirely.)

Similarly, Liggett has not fully accepted FDA's proposed prohibition of the use of cigarette logos on promotional merchandise (Rule 897.34(a)) or items used in redemption programs (Rule 897.34(b)). Rather, Liggett has agreed only to cease distributing such items if they are "more likely to appeal to minors than to adults." Here, again, Liggett apparently continues to agree with the industry that such promotions should be allowed where, as in the case of Philip Morris' programs, they are directed toward adults.

In the same way, Liggett has refused to accept FDA's total prohibition on all event sponsorship in the

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name of cigarette brands (Rule 897.34(c)). Liggett has agreed to terminate sponsorship only if it has not previously sponsored the event and that event attracts audiences which are more than 15% under 18. ~~(By way of comparison, the best estimates are that NASCAR racing -- one of the more of common forms of event sponsorship by cigarette companies -- attracts audiences which are only 3% below the age of 18; they therefore would not be covered by the Liggett settlement.)~~

Finally, Liggett has accepted outright only two of FDA's 22 proposals which in fact would have no impact on Liggett itself. Liggett has agreed not to sell cigarettes in packs of less than 20 (Rule 897.16(b)). To our knowledge, Liggett does not do so, ~~-- nor does Philip Morris or most of the other major tobacco companies.~~

Liggett has also agreed not to advertise on billboards within 1000 feet of a school or playground. (The Philip Morris policy is 500 feet.) But again, to our knowledge, Liggett does not advertise on billboards at all.

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Source: https://www.industrydocuments.ucsf.edu/docs/kpbk0000

In sum, it is significant that the various plaintiff attorneys -- and apparently Commissioner Kessler -- contend that the relatively few restrictions Liggett has accepted on advertising and promotion activities are sufficient, while they ignore the Action Against Access program Philip Morris voluntarily announced last June before Commissioner Kessler made his demands. (A copy of that program -- which does far more than the FDA or Liggett proposals at the retail level, where the problem can best be handled -- is attached.)

Perhaps now that Dr. Kessler has seen the Liggett settlement in writing, he may change his view. But the important point is that it is simply not correct to suggest, as Mr. Lebow, Dr. Kessler and the plaintiffs' attorneys would like to suggest, that the Liggett "settlement" accepts FDA's unreasonable regulations.

Sincerely,

Stephen C. Parrish

Enclosure

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